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Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

October 5, 2000
AO-00-06

Charles Rusman
9 Timberlee Lane
Westford, MA 01886

Re: Distribution of newsletter announcing formation of ballot question

Dear Mr. Rusman:

This letter is in response to your March 29, 2000 request for an advisory opinion.

You have stated that there is a ballot question committee organized in Westford, and that the committee is currently engaged in a campaign to support ballot questions concerning the Westford public schools. A parent teacher organization (PTO) issues a newsletter that is paid for by the PTO and not produced using public resources. The school department also issues a newsletter that is produced using public resources. Teachers distribute both newsletters to students, who then bring the newsletters home to parents. I assume that the PTO and the various schools within the Westford public schools regularly distribute the newsletters and that the newsletters discuss various issues of interest to parents.

Questions

You have asked two questions. First, may the PTO's newsletter, distributed by teachers, announce the formation of a ballot question committee and provide information on how to contact the committee? Second, may the school department newsletter, also distributed by teachers, make the same announcement and provide contact information?

Answers

No, for both questions.

Discussion

In both instances, the proposed distribution would involve the use of public resources for political purposes, which is prohibited by the campaign finance law. See Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979). In addition, the proposed distribution

may not be consistent with the campaign finance law's prohibition of direct or indirect solicitation by public employees or in buildings occupied for state, county or municipal purposes. See M.G.L. c. 55, §§ 13 and 14.

A. Use of public resources for political purposes

Distribution of either newsletter by teachers during their workday would not comply with the campaign finance law because it would involve the use of public resources (teachers) for a political purpose. Ballot question committees may use certain public resources, e.g., a room in town hall may be provided for a committee to have an informational meeting that does not involve fundraising, or mailing labels may be provided to a committee, if "equal access" to these resources exists. See Anderson, 376 Mass. at 200 and Interpretive Bulletin IB-91-01. Equal access means that the resource must be provided on the same terms and conditions to other committees. Municipalities should not, however, enter into arrangements with ballot question committees, even if there is equal access, which require extraordinary or unusual expenditures or the provision of services. See AO-99-14 and AO-99-15, in which the office stated that providing services such as training on Web site development to candidates requesting links to a City Web site would raise concerns because it would be difficult to monitor such an arrangement to ensure that all candidates are treated equally.

Having teachers distribute notices of a ballot question committee's formation raises such concerns. In addition, requiring or asking teachers to distribute notices about the formation of a ballot question committee may raise other issues under the campaign finance law. See M.G.L. c. 55, §§ 16 and 17 (stating that persons employed for compensation or in the service of the commonwealth or any of its subdivisions may not be obligated to contribute or provide political services to a candidate or political committee).

B. Solicitation of political contributions

A ballot question committee is a group that is organized *to raise and spend money* to influence a ballot question. See M.G.L. c. 55, § 1. Unlike other organizations that may also have a perspective on a ballot question, e.g., a parent-teacher organization or a limited taxation group, a ballot question committee is subject to a number of specific requirements under the campaign finance law. Similarly, fundraising efforts made to support ballot question committees, unlike efforts to support other organizations, are subject to special limitations defined in the campaign finance law.

Specifically, the campaign finance law states that appointed persons employed for compensation by the commonwealth or any county, city or town, i.e. public employees such as public school teachers, may not directly *or indirectly* solicit or receive contributions "for any political purpose whatever." See M.G.L. c. 55, § 13. In addition, *no one* may solicit, receive or demand political contributions in a building, such as a public school, which is occupied for municipal purposes. See M.G.L. c. 55, § 14.

In Anderson the Supreme Judicial Court analyzed the provisions of M.G.L. c. 55, including sections 13 and 14, in considering whether a municipality had authority to appropriate and expend

funds to influence a ballot question. The court held that M.G.L. c. 55 bars such expenditures since it “demonstrate[s] a general legislative intent to keep political fund raising and disbursing out of the hands of nonelective public employees and out of city and town halls.” Id., at 186-187. This office has consistently interpreted sections 13 and 14 conservatively, i.e., in a manner designed to ensure adherence to the statute. See IB-92-01.

The office has not previously been asked to provide guidance regarding the distribution by teachers of a notice regarding the formation of a ballot question committee. Consistent with our goal of providing conservative advice, we believe that public school teachers should avoid any activity that may reasonably be considered direct *or indirect* solicitation. Advisory opinion AO-98-09 provides a recent example of what might be considered indirect solicitation. In that opinion the office stated that a public employee should not put a list of supporters together for a political committee *if the employee knows or has reason to know that the list would be used to solicit contributions*. Similarly, distributing an announcement of a ballot question committee and giving a point of contact for the committee might be considered an indirect solicitation, because ballot question committees raise and spend money to influence ballot questions. Encouraging parents to contact the committee would facilitate the committee’s fundraising efforts and therefore may be considered inconsistent with sections 13 and 14.

This opinion is issued on the basis of your letter and solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director